



MI Smoke-free Apartment

**Smoke-Free Multi-Unit
Dwellings
The New Frontier Is Here**

MI Smoke-free Apartment



June 6, 2006



MI Smoke-Free Apartment

Presenter

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Four billboards to set the stage.

Let your landlord hear what
healthy lungs sound like.

MISmokeFreeApartment.org



**Just because other tenants smoke
doesn't mean you have to.**

MISmokeFreeApartment.org

**Sick of secondhand smoke?
Learn your rights as a tenant.**

MI SmokeFree Apartments.org





Dying to talk to your landlord?

MISmokeFreeApartment.org



MISmoke-Free Apartment

Key Points to be Covered

- Why secondhand smoke in apartments is an issue
- Legal issues & smoke-free apartment policies
- Approaches now being used to get smoke-free apt policies adopted: voluntary & legislative
- The MISmokeFreeApartment initiative as an example of a voluntary approach
- Legislative approaches to consider locally and statewide
- Resources available to assist you



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Why smoke-free apartments?

- SHS in apts affects millions of people
- Tenants want smoke-free apartments
- Increasing numbers of complaints about secondhand smoke infiltration in apts
- Health risks the same as elsewhere
- Secondhand smoke cannot be controlled
- Good deal for landlords
- It's legal to do



Why smoke-free apartments?

26% of Michigan housing units are renter-occupied -- that's almost 1 million units.

That's over 2.2 million people,
22% of Michigan's total population

-- U.S. Census, 2000



Why smoke-free apartments?

31% of Ohio housing units
are renter-occupied -- that's
almost 1.4 million units.

That's over 3 million people,
26.4% of Ohio's total population

-- U.S. Census, 2000



Why smoke-free apartments?

47% of New York housing units
are renter-occupied -- that's over
3.3 million units.

That's about 8 million people,

42% of NY's total population

-- U.S. Census, 2000



Why smoke-free apartments?

A recent New Zealand study found that 80% of homes there were smoke-free; and, 43% of smokers live in smoke-free homes.

-- New Zealand Journal of Public Health, August, 2005

Smoke-free homes are the norm, not the exception.

But, most apartment buildings are not smoke-free; a family with a smoke-free policy in their apt can easily have SHS intrusions.



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Tenants want smoke-free apts

- Healthy Androscoggin in Auburn, Maine surveyed 850 tenants; 76% would choose to live in a smoke-free apartment complex
- Twin Cities (MN): random sample survey -
- 55% of renters said they had moved or would move from an apartment because of secondhand smoke seepage
- ALA-California in 2004 surveyed 602 apartment residents; 69% favored requiring all apt buildings to offer non-smoking sections

For opinion surveys:

www.tcsg.org/sfelp/public.htm



Apartment secondhand smoke seepage complaints increase

- SFELP now receives more complaints from individuals about secondhand smoke seepage in apartments than any other, including workplaces complaints
- Tenants beginning to realize they don't have to accept this problem
- Tenants aware of dangers of secondhand smoke



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Why All The Fuss?

- Why is there such concern about **secondhand smoke** in apartments, condominiums and other multi-unit residences?



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Secondhand Smoke is Deadly

- It is a **Group A carcinogen** -- a substance known to **cause cancer in humans for which there is no safe level of exposure.**

National Institute for Environmental Health
Sciences Report,
issued May 15, 2000. U.S. Environmental Protection
Agency

report, issued July, 1993.



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Why Should We Care?

The **health dangers** of secondhand smoke **are NOT any different in residential settings** than in workplaces;

Except, the health effects may be even more serious ...



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Why Should We Care?

Passive smoking currently kills about 12,000 people in the UK every year. ... Most of the deaths are caused by passive smoking at home, but about 500 each year are due to exposure at work.

"Going Smoke-free: The medical case for clean air in the home, at work and in public places" July 12, 2005 report of the Royal College of Physicians, United Kingdom

I.e., 96% of passive smoking deaths in the UK are due to smoking in the home.



Why Should Landlords Care?

Secondhand smoke cannot be controlled by ventilation or air cleaning: On June 30, 2005, the American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE) issued their latest position document on secondhand smoke. It states: "At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity."

www.ashrae.org



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Why Should Landlords Care?

- **Smoking damages residential property:**
 - Poses fire hazard
 - Causes cigarette burn damage to carpets, counters, etc
 - Leaves smoke residue on walls and curtains



Cigarette-caused Fires

Nationally:

- Smoking was the cause of just 9% of apartment fires, but
- Smoking was the cause of 40% of deaths from apartment fires, and
- Smoking was the cause of 16% of injuries from apartment fires

NFIRS, 2002



Why Should Landlords Care?

- **Complaints** from non-smoking tenants about smoke incursions.
- **Legal action** taken against landlords who allow smoking in their buildings.



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But . . .

- Isn't smoking a "right?"
 - No. However, no law prevents smoking in private residences
 - But **nothing stops a landlord from prohibiting smoking** on property now
 - There is **no legal right to smoke**



In Fact

- Tenants negatively impacted by secondhand smoke actually have the right to **seek legal action against landlords** who do not make adequate provisions to protect them from second hand smoke.



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And, the ADA and FHA Say:

- Persons **cannot be discriminated against** in workplaces, public places or in housing due to disability; and, having severe breathing problems constitutes a disability.



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And, the ADA and FHA Say:

- Therefore, these facilities are **required** by the ADA and/or FHA (and parallel state statutes) **to provide reasonable accommodations** to persons with severe breathing disabilities, including possibly making the facility totally smoke-free.



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Other legal actions available...

Common law remedies tenants may use:

- Breach of warranty of habitability and/or breach of warranty of quiet enjoyment
- Nuisance law violation
- Negligence, harassment, trespass, constructive eviction, intentional infliction of emotional distress, battery
- Violations of Housing or Health Codes



So, What Can Landlords Legally Do?

- Apartment owners are **permitted by federal and state law to adopt total smoke-free policies.**



So, What Can Landlords Legally Do?

- HUD Legal Counsel letter of July, 2003 states that apartment owners are **free under federal law to make their buildings totally smoke-free**, so long as they “grandfather” current residents who are smokers.
- “Grandfathering” means for a reasonable period, such as until lease renewal

This letter is accessible on the MISmokeFreeApartment web site at

<http://www.mismokefreeapartment.org/l3rights.html>



So, What Can Landlords Legally Do?

- Michigan Attorney General Opinion of 1992 states that **neither federal nor Michigan law prohibits a landlord from making his/her apartment building totally smoke-free.**

This AG Opinion is accessible on the
MISmokeFreeApartment web site at
<http://www.mismokefreeapartment.org/13rights.html>

- May want to see if there is an Attorney General Opinion on this in your state.



So, What Can Landlords Legally Do?

- As the HUD Legal Counsel letter stated:
“The right to smoke or not to smoke is **not a right that is protected under the Civil Rights Act** of 1964 because smokers are not a protected class under federal law.”

This letter is accessible on the MISmokeFreeApartment web site at

<http://www.mismokefreeapartment.org/l3rights.html>



Adopt New Lease Language

- To implement a smoke-free policy in a multiunit dwelling:
 - Add smoke-free provisions to the leases for apartment complexes or to the “house rules” in public Housing Authority buildings



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Approaches Now Being Used to Get Smoke-Free Policies Adopted

Two major approaches:

- Voluntary adoption by private landlords and/or public housing authorities
- Legislative enactments on local or state levels.



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Voluntary Approach to Get Smoke-Free Policies Adopted

Voluntary approaches being used in a number of states and localities, including: MI, ME, MN, WA, UT, CA, OR, NJ, and probably elsewhere.



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Legislative Approach to Get Smoke-Free Policies Adopted

- Legislative approaches have been or are being tried locally and statewide in a few states, including UT and CA, and possibly elsewhere, to make apartments smoke-free.
- Localities in many states have adopted laws which require common areas in multi-unit residences to be smoke-free.



MI SmokeFreeApartment as an Example of a Voluntary Approach

MI SmokeFreeApartment initiative begun in Michigan in 2004 because:

- Other remedies, including legal, weren't getting the results we hoped for.
- We thought landlords would adopt smoke-free policies if they were sure it was legal.
- We didn't think a legislative approach would succeed at this time.



MI Smoke-Free Apartment

The MI SmokeFreeApartment initiative includes:

- mismokefreeapartment.org web site information & materials
- Radio ads
- Billboards
- Postcard mailings to landlords
- Listing of smoke-free apartments on web site
- Surveys of smoke-free apartment availability
- Technical assistance from SFELP

MI Smoke-free Apartment

Where there's smoke, there can also be a smoke-free apartment. How you can make it happen.



Landlords



Tenants

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Landlords

Tenants

Where there's smoke, there can also be a smoke-free apartment. How you can make it happen.

Tenants' Rights

Your Resources

Did You Know

Tenants

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MI Smoke-free Apartment



Where there's smoke, there can also be a smoke-free apartment. How you can make it happen.

Landlords

Tenants

Myths Revealed

Landlord Rights

Your Risks

Save Money,
Save Your Building

Tools



Landlords

As a landlord, you can play a role in eliminating the leading cause of death in the home and the third leading cause of preventable death in the United States: [secondhand smoke](#).

There is so much false information available to landlords about smoke-free policies, that you may find it difficult to make an informed decision. On this site you will find all of the information you will need to make your building(s) smoke-free.

A smoke-free policy is NOT discriminatory. The right to smoke is not protected under law, according to the opinions of the Michigan Attorney General and HUD (U.S. Department of Housing and Urban Development). In fact, non-smokers with serious breathing disabilities or smoke allergies have legal protection under the Americans with Disabilities Act. As long as the policy is not used to target a protected class or minority, a building manager is legally free to restrict or prohibit smoking in his/her building.

Learn more about the opinions of the [Michigan Attorney General](#) and [HUD](#).



Radio ads

- Two humorous radio ads informing listeners of information on mismokefreeapartment.org
- For use in selected regions of state in coordination with local tobacco reduction coalitions, health departments & apartment associations
- SFELP will assist in raising funds for ads



Billboards

- Six billboards to inform viewers of the mismokefreeapartment.org web site
- For use in selected regions of state in coordination with local tobacco reduction coalitions, health departments & apartment associations
- SFELP will assist in raising funds for and placement of billboards



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Billboards ...

MI SmokeFreeApartment.org

Your Apartment. Your Rights. Your Resource.



Postcard mailings to landlords

- Four large postcards mailed in sequence over three months to inform landlords of the mismokefreeapartment.org web site & reasons for them to go smoke-free
- SFELP did the mailings with lists of landlords obtained in coordination with local tobacco reduction coalitions, health departments & apartment associations



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Postcards ...

MI SmokeFreeApartment.org

Higher profits. Happier tenants. A better apartment building.



start here



MI Smoke-Free Apartment

Postcards ...

If you've been thinking about making your apartment building smoke-free, now is a great time to get started.
A smoke-free building can:

- Provide legal protection
- Reduce maintenance costs
- Attract new tenants
- Reduce turnover of current tenants—both smokers and non-smokers

Now there's a Web site to help you make the switch—mismokefreeapartment.org. Watch your mail for more information, or go online and get the facts right now!

MISmokeFreeApartment.org





Smoke-free apartment listing

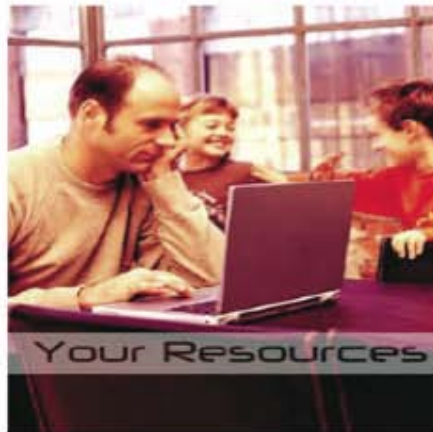
- mismokefreeapartment.org web site includes a listing of smoke-free apartments:
www.mismokefreeapartment.org/listing.html
- SFELP has compiled the list of smoke-free apartments in coordination with local tobacco reduction coalitions, health departments, apartment associations, & others



MI Smoke-Free Apartment

Smoke-free apartment listing site

www.mismokefreeapartment.org/listing.html



"Setting the Standard Since 1932"...

Wednesday, July 21, 2004

[*\(Click for Rental Application\)*](#)

526 Linden, Ann Arbor, MI

Located near the intersection of South University and Washtenaw just minutes from the University of Michigan's central campus and the CCRB (Central Campus Recreation Building). This location offers one, two and two bedroom bi-level apartments with the following amenities:

- * Furnished apartment, includes carpet, Air conditioning, vertical blinds and disposal
 - * Apartments (except #5) have portable dishwashers
 - * Each bedroom of the bi-level apartments have a balcony - each living room of the bi-level apartments will have one or two balconies
 - * Laundry facilities on-site
 - * Heat, hot and cold water provided
 - * One parking space per apartment included in monthly rental rate
 - * No pets
 - * **This is a smoke free building**
 - * Twelve month lease term
 - * Security deposit equals 1 1/2 times the monthly rental rate
-



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Smoke-free Apartment Decal



Welcome to Our SmokeFree Building

All Apartments are Smoke-Free!



Smoke-free apartment surveys

- SFELP conducted a mail survey of apartment owners to locate smoke-free apartments in regions of Michigan
- Survey results will be used for media purposes, planning, etc.
- Surveys were done in coordination with local health departments and tobacco reduction coalitions



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Assistance from SFELP to ...

- Help landlords adopt smoke-free policies
- Help tenants seeking smoke-free apartments to know their rights & resources
- Work in coordination with local tobacco reduction coalitions, health departments, landlord associations, & others to promote smoke-free apartment policies



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You Have Resources

SFELP is available to assist you with:

- Consultations throughout the process of adopting a smoke-free policy; at no cost to you.
- Written analyses of the policy and legal issues.
- Research on what has been done elsewhere.
- Setting up conference calls with other housing directors who have adopted smoke-free policies.
- In-person presentations.
- Drafting a smoke-free policy.
- Assistance on implementation issues.



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You Have Resources Online

MI SmokeFreeApartment web site:

www.mismokefreeapartment.org

**Smoke-Free Environments Law Project
site:**

www.tcsg.org/sfelp/home.htm

SFELP Apartments site:

www.tcsg.org/sfelp/apartment.htm

SFELP Condominiums site:

www.tcsg.org/sfelp/condos.htm



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Was the MI SmokeFreeApartment Initiative Successful?

We think so, because:

- Over 250 smoke-free apartment buildings identified in 20 counties in 6 months; web site listing grows weekly
- Assisted a number of landlords in adopting smoke-free policies & this continues
- Assisted 1st public housing commission in Mich. to adopt smoke-free policy & more coming
- Assisted a Michigan Senior Citizen housing development to adopt smoke-free policy



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Was the MI SmokeFreeApartment Initiative Successful?

- Raised public & landlord awareness of the issue and the fact that smoke-free apts are legal
- Over 60 news reports in 6 months -- virtually all positive -- on TV, radio & newspaper, with a number of page 1 articles
- Aired over 7,000 radio ads
- MISmokeFreeApartment site averaging 20,000 hits per month and people are using the info
- Created excellent esprit de corps with the 10 local health depts who are our partners on the initiative



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Was the MI SmokeFreeApartment Initiative Successful?

- Produced a number of legal and policy analyses that greatly assisted landlords and tenants
- Got HUD policies on this issue to be much more consistent and supportive of the position that it is legal to have smoke-free apt policies and to grandfather tenants just for a reasonable period
- Helped make smoke-free apartments the “new frontier” issue in tobacco control
- Played major role in creating a national network of people working on the smoke-free apts issue



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Housing Authorities Have Adopted Smoke-Free Policies

- Housing Authorities/Commissions have adopted smoke-free policies, including in: Seattle, WA; Auburn, ME; Cloquet, MN; Fort Pierce, FL; Kearney, NE; Madera, CA; Ocean City, NJ; Sanford, ME; Santa Barbara, CA; Cadillac, MI; Plymouth, MI.
- Others are considering doing so.



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Legislative Approaches to Get Smoke-Free Policies Adopted

Legislative Approaches Tried or Proposed:

- Utah law enacted in 1997: right to have smoke-free apts & condos; SHS is “nuisance”; other civil remedies
- Local laws providing for smoke-free common areas
- Thousand Oaks, CA law: requires all future city-aided “affordable” housing to have at least 1/3 of units smoke-free; enacted Sept. 14, 2004
- Model CA proposed ordinance to regulate smoking in multi-unit residences



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Legislative Approaches to Get Smoke-Free Policies Adopted

Legislative Approaches Tried or Proposed:

The tried or proposed legislative approaches are still works-in-process. Much as smoke-free workplaces & public places laws went through a trial and error period, so will legislative approaches to smoke-free housing. E.g., does it ever make sense to have smoking & smoke-free units in the same building?



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Legislative Approaches to Get Smoke-Free Policies Adopted

Utah Second Hand Smoke Amendments

What the Second Hand Smoke Amendments Do

- Give authority to condominium associations to restrict smoking in units, common areas and facilities. Common areas includes yard space.
- Give authority for apartment and rental contracts to include prohibitions on smoking in units, on the premises, or both.
- Establish that any tobacco smoke that drifts into any residential unit a person rents, leases, or owns is a nuisance under the law. The smoke must drift in more than once in each of two or more consecutive day periods. **Note:** "Nuisances" are resolved through a civil court process, not by reporting the condition to the police or the health department. For most people this will require that they consult with their legal advisor on how to proceed.



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Legislative Approaches to Get Smoke-Free Policies Adopted

Utah Second Hand Smoke Amendments: cont.

- Provide that residents of condominiums, apartments, or private homes may seek injunctive relief or damage if exposed to nuisance tobacco smoke.
- Exempt rental units available for temporary rental, such as for vacations or available for only 30 days or fewer at a time from the nuisance tobacco provisions.
- Provide authority for an apartment renter to file a nuisance action even if a renter has signed away his rights to file a nuisance in the rental contract.

Utah law enacted in 1997.

Utah Dept. of Health <http://www.tobaccofreeutah.org/aptcondoguide.html#smoke>



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Legislative Approaches to Get Smoke-Free Policies Adopted

Local laws providing for smoke-free common areas

Local laws requiring smoke-free common areas in multi-unit residential buildings are fairly common in local and state smoke-free workplaces and public places laws. Areas covered include: hallways, entry ways, laundry rooms, common or recreation areas, etc.



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Legislative Approaches to Get Smoke-Free Policies Adopted

Thousand Oaks, CA law:

Requires all future city-aided “affordable” housing to have at least 1/3 of units smoke-free.

Enacted Sept. 14, 2004. Probably nation’s first such law.

Issues: limited to city-aided affordable housing; allows smoking and smoke-free units in same building.



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Legislative Approaches to Get Smoke-Free Policies Adopted

Model CA proposed ordinance to regulate smoking in multi-unit residences includes:

- Findings
- Designates drifting smoke as “nuisance” anywhere in city
- No smoking in common areas of multi-unit housing
- Smoke-free buffer zones around non-smoking units
- Non-smoking units required in multi-unit residences
- Requires no smoking provision in lease



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Legislative Approaches to Get Smoke-Free Policies Adopted

Model CA proposed ordinance to regulate smoking in multi-unit residences includes:
cont

- Requires landlord to disclose location of smoking & non-smoking units to new tenants
- States who is responsible for enforcement of law
- Allows tenant or landlord to enforce ordinance through a lawsuit

Prepared by the Technical Assistance Legal Center (TALC), Oakland, CA

http://talc.phlaw.org/pdf_files/0073.pdf



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You Have Resources Online

MI SmokeFreeApartment web site:

www.mismokefreeapartment.org

**Smoke-Free Environments Law Project
(SFELP) site:**

www.tcsg.org/sfelp/home.htm

SFELP Apartments site:

www.tcsg.org/sfelp/apartment.htm

SFELP Condominiums site:

www.tcsg.org/sfelp/condos.htm



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You Have Resources Online

SmokeFreeForME web site: Maine

www.smokefreeforme.org

Tobacco Free Utah apartment/condo site

www.tobaccofreeutah.org/aptcondoguide.html#smoke

Smokefree Air for Everyone (S.A.F.E.):
California

www.smokefreeapartments.org

Association for Non-Smokers -
Minnesota: Apt site

www.ansrmn.org/ISFA.htm

Technical Assistance Legal Center site:
California

talc.phlaw.org



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You Have Resources Online

Americans for Nonsmokers' Rights site

www.no-smoke.org

RESPECT site: California

www.breath-ala.org

The Center for Tobacco Policy &
Organizing site: CA

www.californialung.org/thecenter/

Kitsap County (WA) Health Dept.:
Housing site

[www.kitsapcountyhealth.com/community_health/health](http://www.kitsapcountyhealth.com/community_health/health_promotion/tp_fresh_air_housing.htm)

[th_promotion/tp_fresh_air_housing.htm](http://www.kitsapcountyhealth.com/community_health/health_promotion/tp_fresh_air_housing.htm)



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To contact SFELP

- www.mismokefreeapartment.org
- **Smoke-Free Environments Law Project**
www.tcsg.org/sfelp/home.htm
- **Smoke-Free Environments Law Project**
The Center for Social Gerontology, Inc.
2307 Shelby Avenue
Ann Arbor, Michigan 48103
734 665-1126
- jbergman@tcsg.org



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To access this ppt presentation

A PowerPoint presentation very similar to this one may be accessed and downloaded from the SFELP

“PowerPoint Presentations” site at www.tcsg.org/sfelp/Powerpoint_SFELP.htm

Or, you can access it directly at <http://tcsg.org/powerpoint11/>



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Smoke-free Apartment Decal



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